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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,220

12/09/2003

Michael J. Sailor

0321.68542

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EXAMINER

MICALI, JOSEPH

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

05/06/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/731,220	Applicant(s) SAILOR ET AL.	
	Examiner Joseph V. Micali	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 14, 15 and 17-31 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 10, 12, 27 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 14, 15 and 17-26 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 29 and 31 is/are rejected.
- 7) ☒ Claim(s) 8 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Status of Application

Claims 1-3, 8-9, 14-15, 17-26, and 29-31 are pending and presented for examination on the merits, as claims 11, 13, and 16 have previously been cancelled and claims 4-7, 10, 12, 27 and 28 remain withdrawn as per applicant's response on February 13th, 2006 to the requirement for restriction/election of species.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-2, 9, 29, and 31 are rejected under 35 U.S.C. 102(b) as being unpatentable by WIPO Pub. No. 01/76564 by Canham (For ease of citation and lookup, the following rejection refers to US Patent No. 6,929,950 by Canham, which is an identical disclosure).**

With respect to claims 1-2, Canham is drawn to a microprojectile delivery system and particulate product (**title**). Specifically, Canham discloses employing porous nanocrystalline silicon (**column 6, lines 61-62, and column 14, lines 4-10**) and a solid state oxidant disposed within the pores of the silicon, specifically a silver nitrate salt (**column 17, lines 35-41**), with the porous silicon comprising a thin film (**column 13, lines 44-46**).

With respect to claim 9, Canham discloses the solid state oxidant being baked into the pores of the silicon (**column 17, lines 35-41**).

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With respect to claim 29, Canham discloses the film being etched into a polycrystalline silicon substrate (**column 13, lines 44-46**).

With respect to claim 31, Canham discloses the silicon comprising a powder (**column 14, lines 4-10**).

Allowable Subject Matter

3. The following is a statement of reasons for the indication of allowable subject matter:

Claim 3 includes the limitation reciting the specific nitrate salt, which has not been shown in the prior art of record. Claim 8 includes the limitation reciting the specific solid state oxidant, which has not been shown in the prior art of record. Claim 14 is drawn to a process not disclosed in the prior art of record. Claim 30 recites a nanowire, which has not been shown in the prior art of record.

4. Claims 8 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to the current claim set have been considered but are moot in view of the new ground(s) of rejection.

With respect to the instant argumentation, the examiner has removed all previously applied references, and thus, all argumentation is no longer valid.

Conclusion

6. Claims 1-2, 9, 29, and 31 are rejected. Claims 8 and 30 are objected to. Claims 3, 14-15, and 17-26 are allowed.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph V. Micali whose telephone number is (571) 270-5906.

The examiner can normally be reached on Monday through Friday, 7:30am to 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry A. Lorengo can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph V Micali/
Examiner, Art Unit 1793

/J.A. LORENZO/
Supervisory Patent Examiner, Art Unit
1793